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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Federal-State Joint Board)
on Universal Service)

CC Docket No. 96-45

To: The Federal-State Joint Board

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**REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

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May 7, 1996

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SUMMARY

In this reply, CompTel will demonstrate that there is broad support among all segments of the telecommunications industry for the *Notice's* definition of the core services to be supported by universal service and for collecting that support through an explicit surcharge on the revenues of all telecommunications providers. *Provided* that access charges also are reduced to cost, the surcharge could be assessed either on retail revenues or gross revenues net of payments to other carriers. In addition, the surcharge should be listed as a separate line item on end user bills. Both of these requirements can be implemented only if access is reduced to cost, which will permit the end user surcharge to be assessed on retail revenues. Finally, there is nearly unanimous support for the Lifeline and Link-Up programs as mechanisms to achieve universal service for low-income customers. If these programs are modified to meet the Act's competitive neutrality requirements, they should be sufficient to provide all of the support needed to ensure universal service for low-income users.

CompTel opposes proposals which would provide unequal distribution of universal service support among retail service providers or would postpone reform to make universal service funding competitively neutral. The Act prohibits the special recovery that several incumbent LECs propose they receive. In addition, the Act requires that universal service support be fully portable among retail local service providers, regardless of whether the provider is entirely facilities-based or offers supported services through the use of underlying facilities (purchased at cost) of another provider.

Further, proposals to "transition" to a competitively neutral funding mechanism over a period of several years should be rejected because they are inconsistent with the Act's

primary goal of facilitating local service competition. A competitively neutral system of universal service is one step in the broader goal of opening up the incumbent LEC networks and bringing rates for interconnection and access to economic cost. Delay in implementing this system would skew the development of such competition.

Finally, CompTel recommends that all of the funding necessary to support the core services be collected from a single federal system which receives contributions from interstate providers based upon their total revenues, both interstate and intrastate.

TABLE OF CONTENTS

SUMMARY	i
I. THE COMMENTS DEMONSTRATE SIGNIFICANT SUPPORT FOR MANY OF THE NOTICE'S PROPOSALS	2
A. Most Parties Agree With the Notice's List of Core Services to be Supported	2
B. There is Broad Support for Collecting Universal Service Funding Via an Explicit Surcharge on Revenues	4
C. The Current Lifeline and Link-Up Programs, Modified to be Competitively Neutral, Should be Used to Provide Support for Low- Income Subscribers	7
II. THE AMOUNT OF FUNDING NECESSARY TO SUPPORT RURAL AND HIGH COST AREAS SHOULD BE DETERMINED USING AN AFFORDABILITY BENCHMARK BASED ON END-USER RATES	8
III. PROPOSALS FOR UNEQUAL RECOVERY FROM A UNIVERSAL SERVICE SUPPORT FUND ARE CONTRARY TO THE ACT'S MANDATE	10
A. Incumbent LECs Are Not Entitled to Special Payments	11
B. Support Must Be Portable Among All Retail Providers of Local Service ..	12
IV. A COMPETITIVELY NEUTRAL UNIVERSAL SERVICE SYSTEM SHOULD BE IMPLEMENTED IMMEDIATELY	14
V. ALL FUNDING FOR THE CORE SERVICES SHOULD COME FROM A SINGLE FEDERAL SYSTEM	15
CONCLUSION	16

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully replies to the comments submitted in response to the Commission's *Notice of Proposed Rulemaking* regarding universal service policies under the Telecommunications Act of 1996 ("the Act").¹ As shown below, there is broad support for the *Notice's* approach to defining universal service, to establishing an explicit funding mechanism, and to advancing universal service among low-income subscribers. However, the Joint Board should reject proposals that would lead to unequal recovery of universal service support among competing local service providers. Further, the Joint Board should recommend the prompt implementation of a reformed universal service support system in order to further the Act's primary purpose of promoting full local service competition.

¹ *Federal-State Board on Universal Service*, Notice of Proposed Rulemaking, FCC 96-93 (rel. Mar. 8, 1996) (hereinafter *Notice*).

I. THE COMMENTS DEMONSTRATE SIGNIFICANT SUPPORT FOR MANY OF THE NOTICE'S PROPOSALS

The record in this proceeding includes comments from the full range of telecommunications providers, industry associations representing such providers, and state public utility regulators. These commenters offered significant support for many of the *Notice's* proposals to preserve and advance universal service to rural/high cost areas and among low-income subscribers.

A. Most Parties Agree With the Notice's List of Core Services to be Supported

The *Notice* proposed to define a "core" set of services which comprise the basic package of telephone service that should be available to all Americans.² This definition was supported by providers of all types of telecommunications services, including current providers of local,³ access,⁴ and interexchange⁵ services, as well as other potential entrants

² The services that the *Notice* proposed to support are (1) voice grade access to the public switched network, with the ability to place and receive calls, (2) touch-tone capability, (3) single party service, (4) access to emergency services (911), and (5) access to operator services. *Notice*, ¶ 16.

³ *See, e.g.*, Ameritech Comments at 7-8; Bell Atlantic Comments at 2-3; GTE Comments at 2; Southwestern Bell Telephone Company Comments at 8; USTA Comments at 13.

⁴ *See, e.g.*, Association of Local Telecommunications Services (ALTS) Comments at 9; MFS Comments at 16; Teleport Communications Group Comments at 6.

⁵ *See, e.g.*, AT&T Comments at 12; LCI Comments at 3; LDDS WorldCom Comments at 7-8; MCI Comments at 3-4.

in these markets.⁶ It is also supported by a number of equipment and user groups⁷ and by state regulators.⁸ Such broad-based support confirms that the *Notice's* fundamental approach is correct. Universal service policies are designed to promote basic access to the network, not to ensure that all subscribers receive the most advanced services offered by telecommunications providers. The list of core services should, as the *Notice's* list does, provide functional access to the network sufficient to enable the subscriber to perform basic functions. It also should offer the *capability* to add other optional services to the subscriber's package, but these services themselves should not be a part of the core services.⁹

Several parties suggest additional "services" that could be included among the core services. CompTel does not object to including those "services" which are not really separate telecommunications products, but rather provide a further explanation of the core capabilities and features that are included in voice-grade access to the public switched network. For example, while CompTel recommended that the Commission clarify that the core interconnection must provide equal access capabilities, several parties recommended equal access to interexchange carriers as a separate "service."¹⁰ Others suggested including as separate services a white pages directory listing and directory assistance, both of which

⁶ See, e.g., NCTA Comments at 5.

⁷ See, e.g., Information Technology Industry Council Comments at 4; ITAA Comments at 4; Ad Hoc Telecommunications Users Committee Comments at 4.

⁸ See, e.g., Florida PSC Comments at 6; Missouri PSC Comments at 4; cf. NARUC Comments at 10 (definition should not include advanced services).

⁹ See CompTel Comments at 4-7.

¹⁰ See, e.g., AT&T Comments at 12; Ameritech Comments at 7 n.11; Florida PSC Comments at 7.

are commonly associated with a basic telephone interconnection.¹¹ These services would add few, if any, additional burdens upon universal service support mechanisms.

Accordingly, these capabilities (whether called separate services or included in voice grade access to the network) should also be supported through a universal service policy.

AT&T recommends that number portability also should be included among the core services to be supported.¹² CompTel agrees with this proposal. Number portability is essentially equal access in a full service environment. It has uniformly been found to be in the public interest in states addressing local competition, such as Illinois, New York and Maryland, and is mandated by the 1996 Act.¹³ Due to its importance in promoting competition in all telecommunications markets, including local services, this capability should be available ubiquitously, and should be supported by universal service policies where necessary.

B. There is Broad Support for Collecting Universal Service Funding Via an Explicit Surcharge on Revenues

As CompTel explained in its initial comments, collection of funds to support the core services must be collected in a manner that is fair to all telecommunications providers, regardless of the services they provide or the technology used to provide them.¹⁴ CompTel

¹¹ See, e.g., AT&T Comments at 12-13; Bell Atlantic Comments at 7; Florida PSC Comments at 7; Southwestern Bell Comments at 8; USTA Comments at 13 n.17; ALTS Comments at 9.

¹² AT&T Comments at 12.

¹³ See 47 U.S.C. § 251(b)(2).

¹⁴ CompTel Comments at 9.

recommended that support payments for rural and low-income subscribers be collected from all interstate providers either as a surcharge on end user retail revenues or on gross revenues minus payments to other carriers for underlying services.¹⁵ Nearly all parties agree that some form of a revenue surcharge is the best way to collect such support funds.¹⁶ A revenue based surcharge in these circumstances is simple, fair, and easy to administer.

Providers should be permitted to include the amount of their universal service obligations as a separate line item on end-user bills. Many parties agreed with CompTel's recommendation that any surcharge be explicit on customer bills.¹⁷ By requiring that universal service support be explicit, Congress essentially acknowledged that universal service support is a tax, just like a sales or gross receipts tax. This tax should be explicit, both in its administration among telecommunications providers and in its identification to end users. Therefore, telecommunications providers should be able to assess universal service obligations on their bills to end users.

Bell Atlantic's proposal to collect universal service funding on the basis of presubscribed interexchange lines contradicts the express requirements of the 1996 Act. Funding based on presubscribed lines is neither equitable nor nondiscriminatory, despite Bell

¹⁵ *Id.* at 15. It is critical that support not be collected or distributed in the form of carrier-to-carrier payments. If, as expected, prior distinctions between telecommunications service markets continue to lose their meaning, carrier-to-carrier payments inevitably would result in one provider subsidizing its competitor.

¹⁶ AT&T Comments at 8-9; GTE Comments at 16-17; LDDS WorldCom Comments at 14-15; MCI Comments at 15-16; Pacific Telesis Comments at 16; U S West Comments at 15; USTA Comments at 24; NYNEX Comments at 24.

¹⁷ *See, e.g.*, AT&T Comments at 9; Citizens for a Sound Economy Foundation Comments at 5; Information Technology Association of America, *et al.*, Comments at 16; GTE Comments at 17; NYNEX Comments at 24.

Atlantic's self-serving claim that the BOCs "are likely soon to have large numbers of presubscribed lines."¹⁸ In fact, even if the BOCs gain "significant" interexchange market share, the majority of their business, local exchange and exchange access service, would be excluded from universal service support obligations. Thus, the majority of the burdens would fall on incumbent interexchange service providers -- perpetuating the current situation, which the Congress found contrary to the public interest. Moreover, Bell Atlantic's proposal would excuse completely a number of telecommunications providers from universal service support. PCS providers, CMRS providers, enhanced service providers, and LECs which do not provide interexchange service all would have no obligation to fund universal service under Bell Atlantic's proposal. For these reasons, universal service support should be collected based upon all telecommunications service revenues, not presubscribed interexchange lines.

If access charges are reduced to costs, it would not matter whether universal service support is collected based upon on retail revenues, or upon gross revenues net of payments for wholesale and access services. In such an environment, the end user ultimately would fund universal service through its rates, and each carrier would remit those funds from its end-user charges. If, however, access charges remain at today's artificially inflated levels, a retail revenue surcharge is inequitable. It is inequitable because the access provider (*i.e.*, the LEC) keeps the contribution associated with its above-cost pricing, but does not remit any of that contribution to the universal service fund. Therefore, if access will not be reduced to

¹⁸ Bell Atlantic Comments at 14.

cost concurrent with universal service reform, universal service funds should be collected based on gross revenues net of carrier-to-carrier payments.¹⁹

C. The Current Lifeline and Link-Up Programs, Modified to be Competitively Neutral, Should be Used to Provide Support for Low-Income Subscribers

Another area of significant support related to the preservation and advancement of universal service among low-income subscribers. As the Commission has recognized, support for low-income subscribers currently is provided through the Lifeline and Link-Up USA programs.²⁰ These programs are "well-targeted [and] effective" in providing support to low-income subscribers.²¹ Indeed, nearly every commenter recommended retaining these two important programs.²² No party demonstrated a need for additional programs to provide support to low-income customers. Thus, the record indicates that support for low-income subscribers could be provided *exclusively* through the Lifeline and Link-Up programs.

¹⁹ This method, however, makes listing a surcharge on end user bills problematic because each carrier's surcharge amount would vary, depending upon the level of its payments to other carriers. Clearly, the best solution is to reduce access charges to cost, and use a retail revenue surcharge for universal service funding.

²⁰ FCC, Universal Service Task Force, *Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms*, 34 (hereinafter "*Addressing Universal Service Issues*").

²¹ *Id.* at 41.

²² See, e.g., AT&T Comments at 17; USTA Comments at 23; Pacific Telesis Comments at 22; GTE Comments at 22; BellSouth Comments at 13; NYNEX Comments at 16; Alabama-Mississippi Telephone Association Comments at 7; NCTA Comments at 13.

The only objection to these programs is that, in their current form, they fail the 1996 Act's competitive neutrality requirements. As LDDS WorldCom notes, the costs of Lifeline and Link-Up are funded by interexchange carriers based upon presubscribed access lines.²³ These programs should be reformed to ensure that all providers, not just interexchange carriers, fund them. Moreover, subscribers currently are permitted to apply Lifeline and Link-Up funds only to the services of the incumbent local exchange carrier.²⁴ These funds should be portable among all retail service providers of the supported services. In addition, the subscriber should, as MCI recommends, be able to apply the support funding to obtain any telecommunications service he or she wishes from that provider.²⁵

II. THE AMOUNT OF FUNDING NECESSARY TO SUPPORT RURAL AND HIGH COST AREAS SHOULD BE DETERMINED USING AN AFFORDABILITY BENCHMARK BASED ON END-USER RATES

A critical question in this proceeding is the size of the fund needed to preserve and advance universal service in rural and high cost areas. Ultimately, the size of the fund will be determined by a comparison between (1) some measure of local exchange costs, whether average costs, proxy costs, or "actual" costs, and (2) a measure of rates or costs that are deemed acceptable or sufficient to make rates in rural or high cost areas "affordable."

To determine this latter measure, several parties recommend the use of a specific end-user rate as a benchmark. For example, Ameritech, AT&T, and U S West recommend that

²³ LDDS WorldCom Comments at 18-19; *see also Addressing Universal Service Issues* at 38.

²⁴ *See Addressing Universal Service Issues* at 40-41.

²⁵ MCI Comments at 6.

the Joint Board determine as a policy matter what an "affordable" rate is for the supported services.²⁶ MCI recommends a benchmark set at a "nation-wide average rate" for the supported services.²⁷ CompTel agrees with these commenters. The Joint Board should establish a target retail rate for rural and high cost areas. This rate should then be used to determine whether an area is eligible for support and how much support should be provided.

Congress set the guiding principle for establishing this benchmark. The Act sets as its goal that rural subscribers receive services "at rates that are reasonably comparable to rates charged for similar services in urban areas."²⁸ For this reason, CompTel recommended in its initial comments that universal service should *not* support rural rates below those charged in urban areas.²⁹ The benchmark, then, should focus on an average rate for urban areas, and support rural rates only when they cannot be priced at a level comparable to these urban rates.³⁰

The benchmark should be determined -- and consequently the size of the universal service fund established -- independent of the current level of LEC subsidies. Approaches which start with the premise of maintaining the current subsidies are inconsistent with the

²⁶ Ameritech Comments at 10-11; AT&T Comments at 14; U S West Comments at 12.

²⁷ MCI Comments at 10.

²⁸ 47 U.S.C. § 254(b)(3).

²⁹ CompTel Comments at 13-14.

³⁰ CompTel also agrees with Ameritech's recommendation that the subsidy provided to an eligible carrier should be the *lesser* amount yielded by (1) the cost measure minus the benchmark, or (2) the cost measure minus the carrier's actual rate. Ameritech Comments at 11. If a carrier is able, for whatever reason, to charge an above-benchmark rate in a particular region, universal service support payments are unnecessary for the amount by which the rate exceeds the benchmark.

Act. For example, Pacific Telesis would set the benchmark by beginning with the current fund levels and then "determin[ing] what level of predicted cost can be supported by that fund."³¹ As CompTel explained in its initial comments, Congress intended the Joint Board to thoroughly review all universal service policies and develop *new* mechanisms that will promote universal service in a full service environment.³² By presuming that the current level of funding is needed (or any level, for that matter), Pacific's approach thwarts the review the Board is instructed to conduct. It also does not allow competition to lower the costs of providing universal service. The Board should determine the size of the fund based upon the benchmark, not determine the benchmark based upon the size of the fund.

III. PROPOSALS FOR UNEQUAL RECOVERY FROM A UNIVERSAL SERVICE SUPPORT FUND ARE CONTRARY TO THE ACT'S MANDATE

Despite the 1996 Act's requirement that universal service support be distributed on an equitable and nondiscriminatory basis, several commenters nevertheless propose policies which would give themselves special funding unavailable to anyone else or would limit the number of entities eligible to receive universal service support funding. These proposals should be rejected.

³¹ Pacific Telesis Comments at 18.

³² CompTel Comments at 2.

A. Incumbent LECs Are Not Entitled to Special Payments

The incumbent LECs make a variety of proposals which share a common theme: that they alone should receive a special support payment, allegedly to "compensate" them for the fact that they have heretofore been legally-protected monopolies. For example, U S West proposes that incumbent LECs receive payments to provide "full recovery of their costs incurred to meet historical carrier-of-last resort obligations."³³ Southwestern Bell proposes a special "capital recovery" element for incumbent LECs.³⁴ BellSouth would earmark this special entitlement for recovery of so-called "under-depreciated assets."³⁵ Finally, others describe the payment as one to compensate incumbent LECs for "stranded investments."³⁶

The concept that any single class of providers -- incumbent LECs or otherwise -- should receive special payments is inimical to the very core of the 1996 Act's universal service provisions. A primary reason for requiring explicit universal service support is to ensure that subsidies are available in a competitively neutral manner. Incumbent LECs may not carve out for themselves a special entitlement that new entrants in the market are not eligible to receive. As CompTel explained in its initial comments, the only way to provide support to local service providers without distorting local exchange competition is to make

³³ U S West Comments at 12.

³⁴ Southwestern Bell Comments at 23-24.

³⁵ BellSouth Comments at 7 n.10; NECA Comments at 10.

³⁶ Western Alliance Comments at 12.

funding available to all retail providers equally, based upon the number of retail customers they serve.³⁷

B. Support Must Be Portable Among All Retail Providers of Local Service

Some commenters also seek to increase their share of universal service support payments by restricting the eligibility for support to facilities-based carriers.³⁸ This proposal is contrary to the express language of Section 214(e)(1), which sets out the criteria a provider must meet in order to be designated as an eligible carrier. Under Section 214(e), an eligible carrier may offer the core services "either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)."³⁹ Clearly, a carrier need not rely entirely on its own facilities in order to receive funding.⁴⁰ Moreover, Congress recognized that, for the near term at least, new local service providers would have to rely on the incumbent LECs' facilities for some or all of the services they provide. Thus, as CompTel argued, a carrier is using its own facilities when it purchases unbundled network

³⁷ CompTel Comments at 16-17.

³⁸ BellSouth Comments at 6 n.8; Bell Atlantic Comments at 10; USTA Comments at 8-9.

³⁹ 47 U.S.C. § 214(e)(1)(A).

⁴⁰ Similarly, there is no support in Section 214(e) for Bell Atlantic's argument that the "facilities" an eligible carrier uses as its own must be loop facilities. *See* Bell Atlantic Comments at 10.

elements at cost from an incumbent LEC and creates a local service product using them.⁴¹

If a provider pays the actual economic cost of an unbundled element, then the wholesale provider (the LEC) receives full compensation for the facility and it is the retail provider that deserves the subsidy for providing the service to the public.

This same principle also applies when a provider uses services obtained pursuant to Section 251(c)(4). As TRA notes, these providers also stand in the place of the underlying facilities provider in the provision of the supported services.⁴² CompTel agrees that the Commission could interpret the eligibility criteria to include these entities or could forbear from enforcing that condition in this instance.⁴³

To ensure that Section 214 is correctly applied by the states, the Commission should provide guidelines specifying the eligibility criteria they are to apply. These guidelines should ensure that universal service support is fully portable between retail providers of the supported services.⁴⁴ It should explicitly reject the overly restrictive interpretations the LECs are advocating here.

⁴¹ CompTel Comments at 16; *see also* AT&T Comments at 21; LDDS WorldCom Comments at 5; USTA Comments at 17 n.24.

⁴² TRA Comments at 9-10.

⁴³ *Id.* at 8-9.

⁴⁴ *See* LDDS WorldCom Comments at 6.

IV. A COMPETITIVELY NEUTRAL UNIVERSAL SERVICE SYSTEM SHOULD BE IMPLEMENTED IMMEDIATELY

Some commenters propose reform of existing universal service mechanisms, but claim that a lengthy "transition" is needed.⁴⁵ Such a transition is neither needed nor consistent with the Act.

CompTel agrees with AT&T that consumers will benefit most if implicit and inequitable subsidies currently employed are eliminated immediately and replaced with explicit, competitively neutral support mechanisms.⁴⁶ The current system favors the incumbent LECs with implicit subsidies that could forestall the development of competitive local exchange service. A "flash cut" transition will end the system of implicit subsidies that distorts competition and prevents telecommunications services from being priced at economically rational levels. Further, because funding will be explicit and is statutorily required to be "sufficient and predictable," a new support system could be implemented immediately without threatening universal service objectives.⁴⁷ Accordingly, the new universal service support mechanisms should be implemented as promptly as possible, without an unnecessary three to five year delay some commenters propose.

If a transition is used, however, the Commission may not grant BOC applications for in-region interLATA entry during the transition period. Section 271(d)(3) requires the Commission, before granting authorization for a BOC to provide in-region interLATA

⁴⁵ See Southwestern Bell Comments at 4-6; Florida PSC Comments at 12; USTA Comments at 18.

⁴⁶ AT&T Comments at 10-11.

⁴⁷ See AT&T Comments at 11 n.14.

services, to find, *inter alia*, that the authorization "is consistent with the public interest, convenience and necessity."⁴⁸ CompTel submits that this public interest finding cannot be made as long as the BOC continues to receive implicit subsidies from its competitors, or explicit subsidies that are not collected or distributed in a competitively neutral manner. In Section 254, Congress declared that equitable and nondiscriminatory universal service policies are consistent with the public interest in promoting telecommunications service competition. To the extent that attainment of that goal is delayed by a transition period, BOC in-region entry is inconsistent with the public interest.

V. ALL FUNDING FOR THE CORE SERVICES SHOULD COME FROM A SINGLE FEDERAL SYSTEM

In its initial comments, CompTel recommended a single federal system to support all costs of providing the core services.⁴⁹ In particular, CompTel recommended a single federal system which would apply to both the interstate and intrastate revenues of contributing carriers. The comments demonstrate significant support for a unified federal system.⁵⁰

There are several reasons why a unified federal system is best. First, as AT&T notes, a non-jurisdictional approach to universal service contributions is both authorized and contemplated by the Act.⁵¹ The Act gives the FCC the authority to collect funds from all

⁴⁸ 47 U.S.C. § 271(d)(3)(c).

⁴⁹ CompTel Comments at 10-11.

⁵⁰ *See, e.g.*, AT&T Comments at 8-9; GTE Comments at 4-5; MCI Comments at 4.

⁵¹ AT&T Comments at 8 n.9.

providers of interstate telecommunications services; it does not limit the FCC's jurisdiction to their interstate services, however. Second, the requirement that contributions be "sufficient" to meet universal service goals is most easily satisfied by a single fund from which all needed support is obtained. Third, as the FCC noted in its *Interconnection* proceeding, strong federal action can play a crucial role in ensuring that competition develops nationally, for all subscribers.⁵²

CONCLUSION

For the foregoing reasons, and for the reasons explained in its initial comments, CompTel urges the Joint Board to move promptly to develop a universal service policy that is explicit, fair, and furthers the development of local service competition. The Joint Board should recommend a support mechanism for the "core" set of services identified in the *Notice*, develop an explicit revenue-based surcharge to recover the cost of supporting those services in rural areas, ensure that eligibility to receive funding is fully portable among retail local service providers, reform the Lifeline and Link-Up programs for low-income

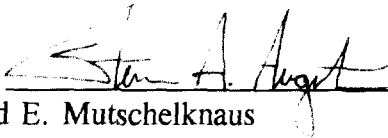
⁵² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182, at ¶ 28 (Apr. 19, 1996) (federal guidelines "minimize variations among states in implementing Congress' national telecommunications policy" and "expedite the transition to competition").

subscribers so that they are competitively neutral, and eliminate implicit subsidies that flow to incumbent LECs through above-cost pricing policies. If these actions are taken, the nation can continue to preserve and advance universal service while also bringing the benefits of competition to local exchange services.

Respectfully submitted,

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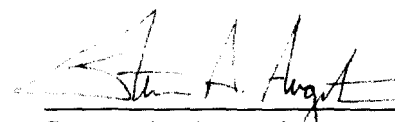
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